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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,470	01/29/2004	Kazumasa Fukazawa	VX032571US	3719
21369	7590	03/22/2007		
POSZ LAW GROUP, PLC 12040 SOUTH LAKES DR. SUITE 101 RESTON, VA 20191			EXAMINER SPISICH, GEORGE D	
			ART UNIT	PAPER NUMBER
			3616	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/766,470

Applicant(s)

FUKAZAWA ET AL.

Examiner

George D. Spisich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/21/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 5-8, it is unclear to claim that the points of application of external force are "within" the unitary casting since these forces are not accurately "within" the casting.

In claim 7, it is not clear what is being claimed by the positional relationship of the attachment of the working machine on the "rear portion" of the second unitary casting.

In claim 8, it is not clear to claim that the traveling units provide the "points of application" of the external force. The traveling units provide the external force at the points of application but do not provide the points of application of the external force.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (USPN 6,098,739).

Anderson et al. discloses a structure of a construction machine comprising a main frame (34) provided in a central portion of the construction machine and extending in the longitudinal direction of the construction machine.

Traveling units (44) are attached to left and right sides of the main frame and a working machine (596) is attached to a front portion and/or a rear portion of the main frame.

The main frame is made from multiple portions/modules that are connected together (such as by welding). There is a module (34 and 56) which is a portion of the main frame to which external force is applied by the traveling units and the working machine and another portion/module (26) that is combined together to form the main frame.

With respect to the modules being formed from a unitary casting and a sheeted module, the method of forming a device is not germane to the issue of patentability of the device itself, therefore this limitation has not been given patentable weight.

The positions of application of the external forces by the traveling units and the working machine are as Applicant has claimed in claims 5-8. With respect to claim 7, the relative position of a working machine being in a "front" or "rear" of a portion can be considered to be read on Anderson since Applicant has not claimed any other structure that does not prevent the elements from being considered to be frontward facing or rearward facing.

Furthermore, it is within ordinary skill of one in the art at the time the invention was made to fabricate portions of a structure by any known methods, such as unitary casting and from a sheet module, to construct a structure.

With respect to the broad limitation that one of the modules is formed so that the module "can be selected" from modules of a plurality of kinds of specification to form a main frame with different specifications, it is with ordinary skill in the art at the time the invention was made to modify a portion of one of the module or provide a module of different specifications (which may be slight differences) to construct a main frame having different specifications as one of ordinary skill in the art has the ability and knowledge and is well known in the art to "customize" a structure and the structure of Anderson et al. clearly has the ability to be "customized" as any structure would.

Claims 1,2 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (JP2000-027229)

AAPA discloses a structure of a construction machine comprising a main frame provided in a central portion of the construction machine and extending in the longitudinal direction of the construction machine.

Traveling units are attached to left and right sides of the main frame and a working machine is attached to a front portion and/or a rear portion of the main frame.

The main frame is made from multiple portions/modules that are connected together (such as by welding). There is a module which is a portion of the main frame

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to which external force is applied by the traveling units and the working machine and another portion/module that is combined together to form the main frame.

Examiner is considering the Prior Art to show the claimed structure of Applicant's Invention but not teach the "unitary" casting and "sheeted" module arrangement being claimed. With respect to the modules being formed from a unitary casting and a sheeted module, the method of forming a device is not germane to the issue of patentability of the device itself, therefore this limitation has not been given patentable weight.

The positions of application of the external forces by the traveling units and the working machine are as Applicant has claimed in claims 5-8. With respect to claim 7, the relative position of a working machine being in a "front" or "rear" of a portion can be considered to be read on AAPA since Applicant has not claimed any other structure that does not prevent the elements from being considered to be frontward facing or rearward facing.

Furthermore, it is within ordinary skill of one in the art at the time the invention was made to fabricate portions of a structure by any known methods, such as unitary casting and from a sheet module, to construct a structure.

With respect to the broad limitation that one of the modules is formed so that the module "can be selected" from modules of a plurality of kinds of specification to form a main frame with different specifications, it is with ordinary skill in the art at the time the invention was made to modify a portion of one of the module or provide a module of different specifications (which may be slight differences) to construct a main frame

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having different specifications as one of ordinary skill in the art has the ability and knowledge and is well known in the art to "customize" a structure and the structure of Anderson et al. clearly has the ability to be "customized" as any structure would.

### ***Response to Arguments***

Applicant's arguments filed December 21, 2006 have been fully considered but they are not persuasive.

With respect to Applicant's argument that the method of making an article must be given weight in this instance, Examiner disagrees and maintains the rejection. Any known method of making an product and the advantages/disadvantages of a particular product, in this case, ability to handle stress against the weight of the product (casting vs. welding) would be knowledge held by one of ordinary skill in the art, and be properly within the scope of one of ordinary skill in the art to decide. Therefore, only the structure of the frame is significant in product claims.

Providing stronger elements (by use of materials, dimension or methods of making) to support heavy loads that provide the needed strength and ability to handle the forces is a basic determination of one of ordinary skill in the art and well within one's scope of expertise. Similarly, performing the opposite (by use of materials, dimension or methods of making) to support lighter loads and to lower the weight of the vehicle (a known advantage in the vehicle art) is a basic determination of one of ordinary skill in the art and well within one's scope of expertise.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George D. Spisich whose telephone number is (571) 272-6676. The examiner can normally be reached on Monday-Friday 9:00 to 6:30 except alt. Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (571) 272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

George D. Spisich  
March 16, 2007



3/19/07

**PAUL N. DICKSON**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3600**